* IN THE HIGH COURT OF DELHI

+ RSA No.57/2005 & CM No.3799/2005 & CM No.10051/2006

% Date of Decision : 11.08.2006

SHAYM SUNDER LAL SINCE DECEASED
THROUGH LEGAL REPRESENTATIVE
PRADEEP KUMAR AGGARWAL THROUGH
POWER OF ATTORNEY HOLDER MR.RAJESH AGGARWAL
... ... PETITIONERS/APPELLANTS

Through : Mr.K.K.Bhati, Advocate

- V E R S U S -

ANJUMAN VAKIL QAUM PANJABIYAN (REGD.).. ... RESPONDENTS

Through : Mr.Lalit Gupta, Advocate for the Respondent No.1.
Mr.Najmi Waziri, Standing Counsel for Delhi Wakf Board- Respondent No.3

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

SANJAY KISHAN KAUL, J. (ORAL)

(1)A defence based on adverse possession has prolonged this litigation since 1967. A suit for possession was filed by the Mutwali in 1967 impleading the predecessor in interest of the petitioner and respondent no.2 as defendants no.2 & 1 respectively in the suit. It

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was claimed in the suit that a part of the land which had been notified in the gazette of 25.02.1965 as kabristan and thus wakf property had been encroached upon by the petitioner and respondent no.2 herein. The suit resulted in a joint decree for possession against two defendants on 29.04.1977.

(2)An appeal was filed by the predecessor in interest of the petitioner (original defendant no.2). Respondent no.1 herein, the Mutwali, also filed cross objections on account of the fact that instead of a joint decree separate decrees ought to have been passed against the two defendants. It may be noticed that the Delhi Wakf Board was impleaded as defendant no.3 in the suit and is respondent no.3 in the present proceedings. The appeal was allowed in terms of the orders dated 30.11.1981 of the first appellate court on the ground that the mutwali had no locus to institute the suit on behalf of the Wakf Board and the cross objections filed by the mutwali were dismissed. This resulted in regular second appeals no.67-68/1982 before this court which was decided on 08.11.1982 holding that the mutwali was competent to institute the suit. The matter was thus remanded to the first appellate court to decide the appeal and the cross objections on merits.

(3)The appeal has finally come to be decided by the impugned judgment dated 08.11.2004. The appeal filed by the petitioner has been dismissed, but the cross objection filed by respondent no.1 have been partly allowed to the extent that separate decrees have

been passed in respect of the disputed land against the two original defendants in the suit. Thus the decree has been passed for 300 square yards of land against original defendant no.1 and for 167 square yards against original defendant no.2 (petitioner herein)

(4)Learned counsel for the petitioner states that important questions of law are involved in the present proceedings. In this behalf learned counsel seeks to refer to the various questions of law in para 19 of the regular second appeal. Except question no (A) all other questions really relate to only re-appraising evidence on record and calling upon this court to derive a different conclusion than what both the courts below have derived on the basis of the material on record. These can hardly be called questions of law. It is to be noticed that the defence of the original defendants no.1 & 2 in the suit was based only on adverse possession. Both the courts below found that there was no such hostile possession which could be classified as adverse possession to make available the defence to the defendants. It may also be noticed that the original defendant no.1 never challenged the decree passed by the trial court. It is only original defendant no.2 who challenged the decree. The said defendant has passed away and the present petition is being prosecuted on behalf of his son through attorney in pursuance to an unregistered power of attorney. A bare reading of the impugned orders of the trial court and the appellate court shows that same are based on appreciation of evidence produced before the trial court

where the defence of adverse possession has been rejected and which does not call for any interference.

(5)Insofar as the question A raised in the present appeal is concerned, the grievance is that in view of the provisions of Section 85 r/w Section 112 of the Delhi Wakf Act, 1995 (herein-after referred to as the said Act), the Civil Court had no jurisdiction to decide the dispute and the matter ought to have been referred to the constituted tribunal under the said Act. This aspect has been dealt with by the appellate court in para 38 while dealing with findings on issue no.11. It may be noticed that in terms of the order dated 05.06.2004 of the appellate court it was held that the provisions would not have retrospective effect since prior to the said Act, the earlier Wakf Act of 1954 was in force when this suit had been instituted. The appellate court came to the conclusion that there was no retrospective application of the said Act. This order passed on 05.06.2004 was never challenged by the petitioner and was accepted. This had thus become final.

(6)In my considered view no infirmity can be found with the reasoning of the appellate court apart from the fact that the petitioner accepted the findings arrived at in terms of the order dated 05.06.2004.

(7)In my considered view the appeal is without any merit and the petitioner has been able to prolong the litigation for almost four decades. The appeal is dismissed with costs of Rs 10,000.

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* No directions are called for on these applications.

The application stand disposed of.

August 11, 2006
dm

SANJAY KISHAN KAUL, J.